

REMARKS

Claims 1-5, 7 and 10-11 are pending in this application. By this Amendment, claims 1-5, 7 and 10-11 are amended and claims 8-9 are canceled. Support for the amendment to claim 1 can be found, for example, in canceled claims 8-9, page 7, line 24, page 8, lines 16-18, and page 15, line 22 - page 18, line 21 of the specification and Figures 2 and 6. Claims 2-5, 7 and 10-11 are amended for clarity and consistency with the amendment to claim 1. No new matter is added. In view of at least the following, reconsideration and allowance are respectfully requested.

I. Rejections under 35 U.S.C. § 102(a) and § 103(a)

The Office Action rejects claims 1, 2 and 7-11 under 35 U.S.C. § 102(a) over JP2001-295681 to Kazuhiro et al. (Kazuhiro); and rejects claims 3-5 under 35 U.S.C. § 103(a) as having been obvious over Kazuhiro in view of U.S. Patent No. 6,169,948 to Fujishima et al. (Fujishima). Claims 8 and 9 are canceled thus obviating their rejections. The rejections of the remaining claims are respectfully traversed.

A construction machine of the presently claims invention may include two variable displacement hydraulic pumps, with a traveling actuator driven with pressure oil discharged from the first hydraulic pump and work actuators driven with pressure oil discharged from either the first hydraulic pump or the second hydraulic pump. The first hydraulic pump may be configured so that the maximum displacement angle can be adjusted. Therefore, when the traveling command is detected and the work command is not detected, the maximum displacement angle of the first hydraulic pump is set larger than the maximum displacement angle set when both the drive command and the work command are detected, and is also set larger than the maximum displacement angle set when the drive command is not detected. Accordingly, when the construction machine travels while it is not engaged in any work operation, the maximum flow rate of the first hydraulic pump is increased so that the

construction machine is able to travel at high speed with pressure oil discharged only from the first hydraulic pump.

Therefore, the presently claimed invention can claim the benefit that a traveling actuator can be driven at high speed with oil discharged from the single first hydraulic pump without the need of forming a complicated traveling circuit in which pressure oil from the first pump and the second pump is made to flow together. Kazuhiro discloses a construction machine with a single variable-capacity hydraulic pump. Therefore, Kazuhiro fails to disclose at least "a first variable displacement hydraulic pump and a second variable displacement hydraulic pump that are driven by a prime mover," "a plurality of work actuators driven with the pressure oil discharged from at least one of the first variable displacement hydraulic pump and the second variable displacement hydraulic pump; a plurality of control valves that control flows of the pressure oil from the first variable displacement hydraulic pump and the second variable displacement hydraulic pump to each of the traveling actuator and the plurality of work actuators," and "a flow rate control device that increases a maximum flow rate of the first variable displacement hydraulic pump wherein the flow rate control device comprises a displacement angle control device that adjusts a maximum displacement angle of the first variable displacement hydraulic pump, and when the drive command for the traveling actuator is detected with the traveling command detection device and the work command is not detected with the work command detection device, the displacement angle control device sets the maximum displacement angle that is larger than the maximum displacement angle set when both the drive command and the work command are detected, and larger than the maximum displacement angle set when the drive command is not detected," as recited in amended claim 1.

Fujishima fails to cure the deficiencies of Kazuhiro with respect to claim 1.

Therefore, claim 1 is patentable over the applied references. Claims 2-5, 7 and 10-11 also are

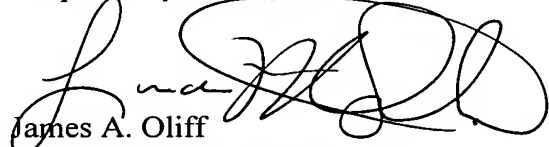
patentable at least for their dependency from claim 1, as well as for the additional features they recite. Accordingly, withdrawal of the rejections is respectfully requested.

II. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of all pending claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


James A. Oliff
Registration No. 27,075

Linda M. Saltiel
Registration No. 51,122

JAO:SGS/ccs

Attachment:
Petition for Extension of Time

Date: March 9, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--